

Remarks

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing Amendment to the Claims, claims 1-26 are pending in the application, of which claims 1, 3, 9, 11, and 17 are independent. By the foregoing Amendment, claims 1-5, 7-13, 15-19, and 21-22 are sought to be amended. Claims 23-26 are sought to be added. No new matter is embraced by this amendment and its entry is respectfully requested. Based on the above Amendment and the remarks set forth below, it is respectfully requested that the Examiner reconsider and withdraw all outstanding objections and rejections.

Objection to the Drawings

The Examiner, on page 2 of the Office Action, has objected to the drawings because they include reference characters not mentioned in the description. Specifically, the Examiner states that in Figure 1, items 19 and 25 are not mentioned in the description. Applicants have amended the Specification to add the reference characters in the description in compliance with 37 C.F.R. § 1.121(b). Based on the amendments to the Specification, Applicants respectfully request that the Examiner withdraw the objection to the drawings.

The Examiner further states Figure 5B as being objected to on page 2 of the Office Action. Applicants respectfully disagree. There is no Figure 5B in the present application. Applicants therefore respectfully request that the Examiner withdraw the objection to the drawings with respect to Figure 5B.

The Examiner, on page 3 of the Office Action, has objected to the drawings under 37 C.F.R. § 1.83(a) because they fail to show reference numbers described in the Specification. Specifically, the Examiner states that Figure 1 Item 17 is missing from the drawing. Applicants respectfully disagree. Item 17 is included in Figure 1. Applicants have attached Figure 1 as filed to the Amendment and have indicated the location of Item 17 by circling Item 17 on the drawing. Applicants respectfully request that the Examiner, after reviewing the attached Figure 1, withdraw the objection of the drawings under 37 C.F.R. § 1.83(a).

Rejection under 35 U.S.C. § 102

The Examiner, on page 4 of the Office Action, has rejected claims 1-6, 9-14, and 17-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,269,401 to Fletcher *et al.* (hereinafter “Fletcher”). Applicants respectfully traverse this rejection. Based on the remarks set forth below, Applicants respectfully request that this rejection be reconsidered and withdrawn.

To anticipate a claim of a pending application, a single reference must disclose each and every element of the claimed invention. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1397 (Fed. Cir. 1986). The exclusion of a claimed element from the single source is enough to negate anticipation by that reference. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574 (Fed. Cir. 1984).

With regards to independent claims 1 and 9, Fletcher does not teach or suggest every element of Applicants’ claimed invention. For example, Fletcher does not teach or suggest at least the following elements of Applicants’ invention:

measuring performance of a multi-computer communication protocol on a single computer system, wherein said single computer system emulates a server and a client, and wherein measuring said performance of said multi-computer communication protocol on said single computer system includes,
executing server code on said single computer system;
executing client code on said single computer system.

Unlike the present invention, which measures the performance of a multi-computer communication protocol on a single computer system, wherein the single computer system emulates a server and a client, Fletcher teaches monitoring communication performance in a communication network comprising communication systems communicatively coupled to each other with communication equipment. *Fletcher*, Abstract. Fletcher teaches a client computer system and a server computer system. *Fletcher*, col. 5, line 57 – col. 8, line 4; and FIGs. 2-4. Thus, contrary to the present invention, Fletcher uses separate computer systems for the client and the server.

With respect to Applicants' independent claims 3 and 11, Fletcher does not teach or suggest at least the following elements:

operating a computer system under test as a server and a client;
executing server code on said computer system under test
according to a multi-computer communication protocol;
executing client code on said computer system under test
according to said multi-computer communication protocol.

Unlike the present invention, Fletcher does not teach or suggest operating a computer system under test as a server and a client and executing both server code and client code on the computer under test according to a multi-computer communication protocol. To the contrary, and as indicated above, Fletcher teaches separate computing systems for the server and the client.

With respect to independent claim 17, Fletcher does not teach or suggest Applicants' elements of: a processor to execute server code and client code on said computer system under test according to a multi-computer communication protocol, said computer system under test to determine performance data for said multi-computer communication protocol, said computer system under test operating as a server and a client. As indicated above, unlike the present invention where the computer system under test operates as a server and a client, Fletcher uses separate computer systems for the server and the client.

Thus, for at least the foregoing reasons, Applicants respectfully submit that independent claims 1, 3, 9, 11, and 17, and the claims that depend therefrom (claims 2, 4-8, 10, 12-16, and 18-22, respectively) are not anticipated by Fletcher. Applicants respectfully request that the Examiner reconsider and withdraw the rejection of independent claims 1, 3, 9, 11, and 17, and the claims that depend therefrom, respectively.

Rejection under 35 U.S.C. § 103

The Examiner, on page 6 of the Office Action, has rejected claims 7, 15, and 21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,269,401 to Fletcher *et al.* (hereinafter "Fletcher") in view of U.S. Patent Application Publication No. 2001/0056456 to Cota-Robles. Applicants respectfully traverse this rejection.

Claims 7, 15, and 21 depend from independent claims 3, 11, and 17, respectively, and are patentable over Fletcher for at least the reasons stated above. Furthermore, Cota-Robles does not teach or suggest the features missing from Fletcher. Applicants therefore

respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 7, 15, and 21.

The Examiner, on page 7 of the Office Action, has rejected claims 8, 16, and 22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,269,401 to Fletcher *et al.* (hereinafter "Fletcher") in view of U.S. Patent Application Publication No. 2001/0056456 to Cota-Robles. Applicants respectfully traverse this rejection.

Claims 8, 16, and 22 depend from independent claims 3, 11, and 17, respectively, and are patentable over Fletcher for at least the reasons stated above. Furthermore, Cota-Robles does not teach or suggest the features missing from Fletcher. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 8, 16, and 22.

New Claims

New claims 23-26 have been added. Claims 23-24 and 25-26 depend from independent claims 1 and 9, respectively, and thus, are patentable over the cited references for at least the reasons stated above.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all currently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Response is respectfully requested.

Respectfully submitted,

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